



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0058]

RIN 1625-AA87

Security Zone; Port of Miami, Florida

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the existing Port of Miami fixed security zone regulation that encompasses certain navigable waters of the Miami Main Channel in Miami, FL. The proposed change is designed to extend the existing security zone eastward. The extension is needed to include future cruise ship terminals at the Port of Miami. This proposed action would extend the existing fixed security zone approximately 840 yards eastward along the Miami Main Channel. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2022-0058 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LTJG Ben Adrien, Waterways Management Division

Chief, U.S. Coast Guard; telephone (305) 535-4307, email

Benjamin.D.Adrien@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On January 23, 2003, the Coast Guard published a final rule entitled, “Security Zones; Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, Florida” in the **Federal Register**¹ to protect the public, ports, and waterways of the Port of Palm Beach, Port Everglades, and the Port of Miami, against potential subversive acts. The existing fixed security zone described in 33 CFR 165.760(b)(2), for the Port of Miami, encompasses all waters between Watson Island and Star Island from the MacArthur Causeway south to Port of Miami. The Port of Miami is undergoing an expansion project that will create new cruise ship terminals at the eastern end of the Port and outside the existing security zone.

The proposed rule would make changes to the existing fixed security zone for the Port of Miami, described in § 165.760(b)(2), by extending the zone by approximately 840 yards eastward along the Miami Main Channel to just west of the Biscayne Bay Pilots Station. This proposed change is intended to protect the public, ports and waterways of the Port of Miami against potential subversive acts. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

¹ 68 FR 3189.

The Coast Guard is proposing to extend the existing Port of Miami fixed security zone eastward approximately 840 yards. The extension would cover all navigable waters in the Main Ship Channel from approximately Star Island to just west of the Biscayne Bay Pilots Station. The extension would carry the same regulations described in § 165.760, which goes into effect when two or more passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG), enter or moor within this zone. When the security zone is in effect, persons and vessels would not be allowed to enter or transit the security zone along the Miami Main Channel, unless authorized by Captain of the Port of Miami or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on three specific factors: (1) persons and vessels may transit the Miami Main Channel when only one passenger vessel is berthed in the channel, one vessel carrying cargoes of particular hazard is berthed in the channel, or one vessel carrying LHG is berthed in the channel; (2) persons and vessels may operate within the security zone when authorized by Captain of the Port of Miami or

a designated representative; and (3) mariners will be notified of the fixed security zone extension through the Local Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security

Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves increasing the size of an existing security zone along the Miami Main Channel. Such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to

<https://www.regulations.gov>, type USCG-2022-0058 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. In § 165.760, revise paragraph (b)(2) to read as follows:

§ 165.760 Security Zones; Port of Palm Beach, Port Everglades, and Port of Miami, Florida.

* * * * *

(b) * * *

(2) *Fixed security zone in Port of Miami, Florida.* A fixed security zone encompassing all navigable waters within the Miami Main Channel between Star Island to just west of the Biscayne Bay Pilots Station. The security zone is formed by an imaginary line starting at the northwest corner in position 25°46.33'N, 080°09.16'W; thence in an easterly direction to the northeast corner in position 25°46.17'N, 080°08.77'W; thence in a southerly direction to the southeast corner in position 25°46.04'N, 080°08.75'W; thence in a northwesterly direction to the southwest corner in position 25°46.23'N, 080°09.16'W, thence in a northerly direction back to the northwest corner.

(i) When the security zone is in effect, persons and vessels shall not enter or transit the security zone along the Miami Main Channel unless authorized by Captain of the Port of Miami or a designated representative.

(ii) Persons and vessels may transit the Miami Main Channel when only one passenger vessel is berthed in the channel, one vessel carrying cargoes of particular hazard is berthed in the channel, or one vessel carrying LHG is berthed in the channel.

(iii) Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

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Dated: August 2, 2022.

C. R. Cederholm,
Captain, U.S. Coast Guard,
Captain of the Port Miami.

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